IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.652 OF 2004
IN
SUMMARY SUIT NO.1576 OF 2004

Sify Ltd. ..Plaintiffs

Vs.

First Flight Courier Ltd. ..Defendants

Mr.F.E.D'vetri a/w Siddhu Srivastava i/b D.H.Law Associates for the plaintiffs

Mr.M.Y.Gupte for the defendants

CORAM : S.U.KAMDAR, J
DATED : 3RD OCTOBER, 2005

P.C.:

1. The present suit is filed for the purpose of recovery of amount due and payable by the defendants to the plaintiffs for providing of Internet Access and Virtual Private Networks Services. It is the case of the plaintiffs that in respect of invoices which are Exhibits to the affidavit, there is an outstanding amount of Rs.23,18,797/- and interest thereon of Rs.2,54,996/-. Thus,there is due and payable in the present suit by the defendants to the plaintiffs of sum of Rs.25,73,793/-. The learned

counsel for the defendants has contended that initially for certain period there was no service rendered by the plaintiffs and accordingly they were not liable to make payment of the said amount. The learned counsel for the plaintiffs has pointed out that the said amount for the period upto November 2000 has been waived towards service charges as mentioned in letter dt.29.11.00. However, the learned counsel for the defendants contends that infact the said charges were waived still they have made the payment and for which credit is not been given. The learned counsel for the plaintiffs has contended that the amount which is paid by the defendant is not towards service charges but it is towards installation charges which were liable to pay even though the services were not rendered at the relevant time and that claim was not waived.

2. The second contention raised by the learned counsel for the defendants is that there is a deficiency of services. Looking at the correspondence, I do not find any merits in the said defence. There is no material evidence to

show that there is any such deficiency of services of the plaintiffs for providing services to the defendants. The learned counsel has thereafter contended that suit is on account and therefore suit is not maintainable. However keeping in mind that the suit is based on each of the invoices this is a fit case where leave be granted on condition I accordingly, direct leave to defend on condition to deposit a sum of Rs.15 lacs within a period of 4 weeks, failing which plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit of the said amount. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.